



**Submission
to the
Joint Standing Committee on Treaties Inquiry into the
Free Trade Agreement between Australia and the United
Kingdom of Great Britain and Northern Ireland**

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Correna Haythorpe
Federal President

Kevin Bates
Federal Secretary

Australian Education Union
Ground Floor, 120 Clarendon Street
Southbank Vic 3006
PO Box 1158
South Melbourne Vic 3205

Telephone: +61 (0)3 9693 1800
Facsimile: +61 (0)3 9693 1805
Web: www.aeufederal.org.au
E-mail: aeu@aeufederal.org.au

Introduction and summary

The Australian Education Union (AEU) represents over 198,000 educator members employed in the public primary, secondary, early childhood and TAFE sectors throughout Australia. As such, the AEU welcomes the opportunity to respond to this inquiry.

This submission will focus on two chapters that are of particular concern to the AEU. First it will consider Chapter 10 Professional services and recognition of professional qualifications, with a focus on the potential impact of the mutual recognition of professional qualifications between Australia and the UK for teachers. Secondly, it will consider Chapter 16 on Government Procurement, with a particular focus on the potential impact of the inclusion of TAFE NSW and TAFE SA on the positive exemptions list at Annex 16.a.

Chapter 10 – Professional services and recognition of professional qualifications

At the heart of the AEU’s concerns in relation to Chapter 10 of the Free Trade Agreement (FTA) are the maintenance of high professional standards in teaching, the quality of education that students receive, and the safety and protection of children.

The AEU supports state and territory-based teacher registration as currently practised in Australia. Jurisdiction-specific registration aligns well with and complements the primary responsibility of States and Territories for the provision of school education, the employment of teachers, the regulation of entry into the teaching profession, the complex and specific legislation operating in each jurisdiction, and respects the importance of the close relationships between the teaching profession and the registration process. It is through the State and Territory based legislation and teacher registration authorities that any developments in this field must continue to occur.

The autonomy of the States and Territories with regard to teacher registration was recognised and reinforced by the Australian Government through exemptions available to State and Territory Ministers in the Mutual Recognition Amendment Bill 2021.¹ Sections 42S and 42T of that Bill provide that a State or Territory Minister may make two forms of declarations excluding a specific occupational/professional registration (e.g. teacher registrations) and exempting them from Automatic Mutual Recognition (AMR) for up to 5 years.²

The Australian Professional Standards for Teachers (the Standards) provide the necessary foundation to ensure consistency among Australian teachers across all jurisdictions, and at the core of that consistency and the maintenance of the Standards is the qualification that registered teachers must have.³

¹ https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r6689

² https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r6689

³ Australian Institute for Teaching and School Leadership (2011), *Australian Professional Standards for Teachers*, p.2

Table 1: Australian Professional Standards for Teachers

Domains of teaching	Standards
Professional Knowledge	1. Know students and how they learn 2. Know the content and how to teach it
Professional Practice	3. Plan for and implement effective teaching and learning 4. Create and maintain supportive and safe learning environments 5. Assess, provide feedback and report on student learning
Professional Engagement	6. Engage in professional learning 7. Engage professionally with colleagues, parents/carers and the community

The AEU is supportive of consistency of teacher registration processes where they promote every child’s right to a quality education and facilitate teachers’ transition across state/territory or international boundaries. However, it is imperative that teacher registration must continue to rely on adherence to rigorous standards and must continue to require the completion of approved and high-quality Initial Teacher Education. Every child deserves to be taught by qualified and appropriately registered teachers.

Any provision in the FTA which could encourage or facilitate the lowering of teacher professional standards in Australia, including by permitting the entry of unqualified teachers into the profession and into our schools, poses an unacceptable risk to the quality of education our children will receive.

In the UK, individuals are permitted to work as teachers in many types of schools without having undertaken any Initial Teacher Education (ITE) and without meeting professional standards. There are currently 2,771 private, academy and free schools in England that do not require teachers to be qualified.⁴

In England, Qualified Teacher Status (QTS) is a legal requirement to teach in what are referred to as “maintained schools”. These are public (state) schools in England where funding and oversight are provided at the local government (council) level. There are many schools in England where QTS is not required to teach, including some government funded schools such as academy schools and free schools. Since their inception in 2010, free schools (government funded schools set up and run independently of local government control) have always been able to employ unqualified teachers. Until 2012, academies (previously local government run schools controlled by charitable or faith based trusts)⁵ were bound by the same rules as maintained schools in their funding agreements, but from 2012 academies have been able to employ anyone they deem suitable as a teacher, whether or not that person holds QTS. All private or independent schools which, unlike Australian private schools, do not

⁴ <https://explore-education-statistics.service.gov.uk/find-statistics/school-pupils-and-their-characteristics>

⁵ <https://researchbriefings.files.parliament.uk/documents/SN07059/SN07059.pdf>

receive government funding, are also free to hire any person as a teacher regardless of their QTS.⁶

In Wales, state school teachers must have QTS and be registered with the teaching council, but schools may employ unqualified teachers in certain strict circumstances.⁷ In Scotland and Northern Ireland, ITE comprising either a four year undergraduate education degree or a separate undergraduate degree plus a Professional Graduate Diploma in Education and additional English and Maths qualifications are required to gain QTS.

There are substantial numbers of unqualified teachers working in schools across the UK, the vast majority in England, and their numbers have increased by more than sixty percent over the last decade. In 2012 there were 14,800 unqualified teachers in schools in England, and by 2017, of the 452,000 teachers employed in state funded schools in England, 24,000 (5%) were unqualified. These unqualified teachers taught an estimated 600,000 students that year.⁸

There are significant and ongoing concerns from teacher representative bodies in the UK of the impact that unqualified teachers has had on schools and students. The UK National Education Union (NEU) has stated that “Allowing academies and free schools to hire unqualified teaching staff may lead to a decline in educational standards. Unqualified teachers may have difficulty coping with pupils with behavioural issues and special educational needs. They may be an expert in their subject specialism but they will lack the classroom experience and pedagogical background needed to maximise children’s learning potential and properly support their educational development.”⁹

The AEU supports the NEU in its concerns about the prevalence of unqualified teachers in classrooms in the UK. However, our primary immediate concern in the context of this submission is that in England QTS can be gained by unqualified teachers without ever having undertaken appropriate ITE. There are three routes by which aspiring teachers in England can gain QTS. They are:

1. By applying to the Teaching Regulation Agency (TRA), this route is available to registered teachers from several countries including Australia
2. By undergoing an assessment to demonstrate they meet the standards for QTS (with no prior or further training needed)
3. By completing a teacher training course in England¹⁰

QTS applies to education of children aged 3-18 and Early Years (children up to 5 years) teachers require an Early Years Teacher Status (EYTS). This can be attained through a 3–4-year bachelor’s degree, or through a 1 year academic or workplace-based graduate program. As for school teachers in England, a 3-month graduate ‘assessment only’ program is available for teachers meeting the EYT standards.

⁶ <https://www.gov.uk/guidance/qualified-teacher-status-qts>

⁷ https://neu.org.uk/qualified-teacher-status#_ftn6

⁸ <https://www.bbc.com/news/education-40720697>

⁹ https://neu.org.uk/qualified-teacher-status#_ftn6

¹⁰ [https://www.gov.uk/government/publications/apply-for-qualified-teacher-status-qts-if-you-teach-outside-the-uk/routes-to-qualified-teacher-status-qts-for-teachers-and-those-with-teaching-experience-outside-the-uk#:~:text=Apply%20for%20qualified%20teacher%20status%20\(%20QTS%20\),-There%20are%203&text=You%20can%20obtain%20QTS%20by,teacher%20training%20course%20in%20England](https://www.gov.uk/government/publications/apply-for-qualified-teacher-status-qts-if-you-teach-outside-the-uk/routes-to-qualified-teacher-status-qts-for-teachers-and-those-with-teaching-experience-outside-the-uk#:~:text=Apply%20for%20qualified%20teacher%20status%20(%20QTS%20),-There%20are%203&text=You%20can%20obtain%20QTS%20by,teacher%20training%20course%20in%20England)

The second route to gaining QTS is of great concern to the AEU as it does not require the applicant to undertake ITE of any kind. The only requirements for this route to QTS are the completion of any tertiary degree, a pass grade in English and Maths at GCSE level (Year 10 equivalent) and two years of teaching experience as an unqualified teacher in the UK or as a teacher in a country not recognised by the Teacher Regulation Agency (TRA).

Article 10.1.1 of the Australia – UK Free Trade Agreement (FTA) defines professional qualifications as “qualifications attested by evidence of formal qualifications **or professional experience and can include post academic training or experience required for the right to practise.**”¹¹ Further, article 10.3 states that the objectives of the Chapter are to:

(a) to encourage the development of systems for the recognition of professional qualifications and to better facilitate the international trade in professional services between the Parties;

(b) to facilitate the sharing of knowledge and expertise on professional services, accreditation, standards, and regulation between relevant bodies of the Parties in the development of best practice; and

*(c) to encourage each Party to be at the forefront of the liberalisation of international trade in professional services.*¹²

The AEU is very concerned that these objectives may allow for the recognition of the QTS of those who have gained that status in the UK through the assessment route, and thus allow people without relevant ITE qualifications to gain registration and to teach in Australian schools.

It is notable that “best practice” in Article 10.3(b) is not defined. In the context of the objective, which aims to “facilitate the sharing of knowledge and expertise on professional services, accreditation, standards, and regulation”, the fact that there is no explicit commitment to maintaining and raising professional standards, or any reference to the importance of formal or tertiary qualifications, is highly concerning. When read alongside the objective of facilitating and liberalising international trade in professional services, the potential risks to the provision of quality education in Australia are starkly revealed.

Our concerns are not alleviated, but further heightened, by Article 10.5 of the proposed FTA, which states:

If access to or pursuit of a regulated profession in the jurisdiction of the other Party is contingent on possession of specific professional qualifications, that Party shall encourage, as appropriate, its relevant bodies to establish and operate systems for recognition of professional qualifications obtained in the other Party’s jurisdiction.

Currently, QTS alone is not sufficient for teachers from the UK to teach in Australia and all state and Territory registration bodies require teachers from the UK who wish to practice in

¹¹ <https://www.dfat.gov.au/trade/agreements/not-yet-in-force/aukfta/official-text/australia-uk-fta-chapter-10-professional-services-and-recognition-professional-qualifications> p.1

¹² <https://www.dfat.gov.au/trade/agreements/not-yet-in-force/aukfta/official-text/australia-uk-fta-chapter-10-professional-services-and-recognition-professional-qualifications> p.2

Australia to hold a four year undergraduate teaching degree or a three year bachelor degree and a one year post graduate teaching certificate in order to apply for provisional registration, with full registration only granted following an acceptable period of experience teaching in schools in Australia or New Zealand.¹³

It is not difficult to envision that under this FTA, QTS could become the established system and the qualification standard for the recognition of professional qualifications called for in Article 10.5. The focus on the liberalisation of the recognition of professional qualifications contained in the objectives of Chapter 10 allow significant room for Australia's existing State and Territory based teacher requirements, which are critical to maintaining a high-quality education for every child, to be undermined by this FTA.

The AEU supports effective and efficient recognition of professional qualifications for teachers between Australia and the UK. However, the desire "to be at the forefront of the liberalisation of international trade in professional services" as expressed at Article 10.1.1 of the FTA must not result in an undermining or overruling of the existing requirements for UK teachers to gain provisional registration in Australian school systems.

The AEU supports the maintenance of high standards at all levels of the profession, including the qualifications required at point of entry. The AEU strongly opposes any potential lowering of the qualification requirement for teacher registration in Australia from a minimum four year initial teacher education degree qualification or equivalent, as is currently required by all State and Territory registration bodies for all teachers whether their qualifications have been gained in Australia or internationally.

Chapter 10 also raises what is undoubtedly the most significant issue at stake for teachers, the matter of child protection. The potential for unsuitable individuals to more easily cross borders poses an unacceptable risk to children. This risk to child safety and protection is the most significant concern in relation to any system of mutual recognition as it applies to teaching. A single child being harmed as a result of a provision in this treaty is not something that the teaching profession or either party to the FTA can ever accept.

Processes for child protection checks are different across jurisdictions, including in terms of rigour. For example, the Working With Children Check is mandatory across all States and Territories. However, in some jurisdictions there are additional suitability assessments. In other jurisdictions, that is not part of the teacher registration process.

In some jurisdictions police and criminal checks are required on a regular basis; in other jurisdictions, they are only required to be undertaken once. The variations are enormous. Similarly, NSW has checks such as the Department of Education's Not to be Employed List, but there is no such national scheme.

Given the differing requirements across jurisdictions around police and criminal checks and suitability assessments, creating such a list of persons not to be employed on a national scale – let alone between two national jurisdictions – in a way that is safe and protects our children

¹³ <https://www.vit.vic.edu.au/register/categories/interstate-overseas#:~:text=Teachers%20who%20wish%20to%20apply,interstate%20or%20New%20Zealand%20registration.&> & <https://educationstandards.nsw.edu.au/wps/portal/nesa/teacher-accreditation/meeting-requirements/who-needs-accreditation>

and also ensures procedural fairness for individual teachers would present insurmountable difficulties and pose unacceptable risks.

Worryingly, administrative errors made in either the UK or in Australia in relation to such processes may result in unsuitable individuals having access to child-related employment in schools in the other jurisdiction.

These concerns underline the need for relevant bodies in jurisdictions in both the UK and Australia to retain their independent capacities to ensure robust child protection standards are applied for entry into teaching and the filling of teaching positions. Ultimately, any lowering of child protection standards, through “liberalisation of international trade” or the associated undermining of the autonomy of relevant bodies in specific jurisdictions to maintain standards of entry and ongoing practice into the teaching profession, poses an unacceptable risk to students in classrooms in both Australia and the UK.

The AEU is aware that the Department for Foreign Affairs and trade (DFAT) view the application of mutual recognition of qualifications as primarily a matter for the relevant professional registration bodies, and that DFAT is primarily seeking to provide the framework to encourage professional services bodies to consider issues arising from the recognition of professional qualifications through the Professional Services Working Group described at Article 10.6. However, there is no indication in the text of the FTA on how professional bodies will be consulted by the Professional Services Working Group or of the weight which their representations will be considered.

Further, the AEU’s consultation with State and Territory based teacher registration authorities has revealed that applying uniform registration requirements between the UK and Australia would require substantial legislative changes in some jurisdictions and would require some jurisdictions to lower significantly their standards for registration, particularly in relation to the “alternative authority to teach” pathway to registration.

Given all of the concerns outlined above, the AEU believes that the potential negative impact in Australia - on the teaching profession, on student learning and on child protection and safety- of the liberalisation outlined in Chapter 10 of the FTA, is so great that it warrants the attention of the Joint Standing Committee on Treaties (the Committee) beyond delegation to the Professional Services Working Group.

The AEU urges the Committee to consider the potential for future negotiations on mutual recognition of qualifications in article Chapter 10 to lower the standard of entry to provisional registration to teach in Australia to the QTS and the subsequent potential for such a change to undermine the current requirements of all state and territory registration bodies as they pertain to the provisional registration of teachers from the UK to teach in Australia.

The AEU urges the government to ensure that there are no future negotiations by government arising from Article 10.4 and 10.5 that would undermine current state and territory registration requirements, including the autonomy of all Australian jurisdictions to maintain high standards of entry into the teaching profession, and specifically that the assessment only route to QTS (as described in the guidance produced by the Department for

Education in England¹⁴) is specifically prohibited in the FTA as a valid qualification to seek teacher registration in all Australian jurisdictions.

Chapter 16 – Government Procurement

The AEU opposes the inclusion of TAFE NSW and TAFE SA in Chapter 16 Government Procurement at Annex 16a: Section B – Sub-Central Government Entities. In particular the AEU objects to the impact that Article 16.4 could have on the established public provider of vocational education and training in these two states, which could include further significant job losses and downgrading of the quality of provision.

Article 16.4.1 on General Principles National Treatment and Non-Discrimination states:

With respect to any measure regarding covered procurement, each Party, including its procuring entities, shall accord immediately and unconditionally to the goods and services of the other Party and to the suppliers of the other Party, treatment no less favourable than the treatment that the Party, including its procuring entities, accords to domestic goods, services, and suppliers.

The AEU is also concerned about the potential impact of Articles 16.4.2 (a) and (b) General Principles on the TAFE sector in two states that have already seen damaging cuts to TAFE provision and significant outsourcing. Articles 16.4.2 (a) and (b) state:

2. With respect to any measure regarding covered procurement, neither Party, including its procuring entities, shall:

*(a) treat a locally established supplier less favourably than another locally established supplier on the basis of the degree of foreign affiliation or ownership; or
(b) discriminate against a locally established supplier on the basis that the good or service offered by that supplier for a particular procurement is a good or service of the other Party*

TAFE NSW

The AEU notes that TAFE NSW is listed for the first time in any trade agreement as a procuring entity by the NSW Government at item 41, and that Note 2 for NSW states:

For TAFE NSW, Chapter 16 (Government Procurement) shall only apply to this entity, following an implementation period of 24 months from entry into force of this Agreement, to allow for necessary changes to technology systems, policies and processes.

We recognise that the listing of TAFE would normally only include competitive tendering of purchasing of goods and services used in TAFE operations., but the 24-month lead time raises questions about whether the NSW government intends to contact out more vocational education and training courses.

¹⁴ <https://www.gov.uk/guidance/qualified-teacher-status-qts>

The AEU has made enquiries to TAFE NSW regarding the NSW Government's intention in including TAFE NSW as a procuring entity, and for the reasons behind the two-year implementation period, but has not received a response. The AEU's concern is that the implementation period is designed to allow TAFE NSW time to redesign its processes to increase its outsourcing of vocational education and training courses.

TAFE NSW has already been subjected to substantial cuts and job losses in recent years, with over 5,000 jobs lost since 2012¹⁵ and another 678 planned job losses revealed in 2021.¹⁶ Government support for and reliance upon private providers, including providing the latter access to public funds, is ultimately responsible for these job losses.

Students have not benefitted from this marketisation of TAFE NSW. Where TAFE NSW has had to compete with private providers, the most socio-economically disadvantaged students, and regional and remote students have been particularly negatively impacted. In NSW, from 2013-17, the two most disadvantaged quintiles lost 2,300 students, while there was an increase of 2,700 in most advantaged grouping. Given that private providers establish themselves in cities at greater rates than TAFE does, it is disappointing but unsurprising that from 2004 to 2017, the percentage of government-funded vocational education students in outer regional and remote areas dropped by over 50% each. In relation to these outcomes, Dr Don Zoellner from Charles Darwin University has stated that "When you introduce markets you essentially withdraw from regional and remote training."¹⁷

Additionally, on March 3rd 2022 it was revealed that TAFE NSW is already involved in substantial outsourcing of course development and has outsourced the redevelopment of 261 courses to the professional services companies EY and Deloitte.¹⁸ Subsequent investigations have revealed that EY was awarded \$9.9 million¹⁹ and Deloitte was awarded \$6.6 million for course development prior to semester one 2022 with the justification that:

*TAFE NSW is facing a large volume of Product Development requirements based on the amount of transitioning products. To cope with this volume a Professional Services Engagement will provide additional resources to augment current workforce to meet the demands and timeframes for Transitioning Product.*²⁰

This course development work was then further sub-contracted by EY and Deloitte to the US, Denmark and India based company InfoPro. Following this outsourcing, multiple sources within TAFE NSW advised that that the courses returned by EY and Deloitte via InfoPro "are of an extremely poor standard, with language limitations and a lack of knowledge of the

¹⁵ Pennington, A., *An Investment in Productivity and Inclusion: The Economics and Social Benefits of the TAFE System*, Centre for Future Work at the Australia Institute, 2020

¹⁶ <https://www.smh.com.au/national/nsw/tafe-restructure-forces-job-cuts-and-a-spill-of-hundreds-of-positions-20210405-p57gnh.html#:~:text=A%20spokeswoman%20for%20TAFE%20NSW,are%20not%20front%2Dline%20jobs.>

¹⁷ <https://news.nswtf.org.au/blog/news/2019/03/vocational-learning-opportunities-reduced-many-under-funding-model>

¹⁸ <https://www.parliament.nsw.gov.au/lcdocs/transcripts/2884/Transcript%20-%20PC%203%20-%203%20March%202022%20-%20UNCORRECTED.pdf> p.15

¹⁹ [eTendering - Department of Education - Contract Award Notice Detail View - CW8916 \(nsw.gov.au\)](https://www.parliament.nsw.gov.au/lcdocs/transcripts/2884/Transcript%20-%20PC%203%20-%203%20March%202022%20-%20UNCORRECTED.pdf)

²⁰ [eTendering - Department of Education - Contract Award Notice Detail View - CW8914 \(nsw.gov.au\)](https://www.parliament.nsw.gov.au/lcdocs/transcripts/2884/Transcript%20-%20PC%203%20-%203%20March%202022%20-%20UNCORRECTED.pdf)

subject area compromising the outcome.”²¹ One TAFE NSW teacher told the Daily Telegraph, that:

“We tried to help as a subject matter expert, but they are so disorganised, the people I had to explain the basics of the industry and teach them, and give them material to create the learning materials for us.”

“These people were trying to work out the Australian Industry Standards, laws and regulations, trying to come up with something, some kind of assessment ... They have no idea about the TAFE student profile ... they just copied and pasted the learning outcomes from the (Training.gov) website.”²²

This hugely wasteful and inefficient outsourcing to a service provider with no intrinsic understanding of the TAFE system and its students, or of Australian industry and training standards provides a preview of what is likely to follow the inclusion of TAFE NSW as a procuring entity. In potentially encouraging and facilitating increased outsourcing and privatisation, the inclusion of TAFE NSW in Chapter 16 of the FTA will further erode skilled jobs in the sector and in the broader economy, and compound the damage that has already been done to quality vocational education and training in NSW.

If the NSW government does decide to contract out more vocational education and training courses, and if that were done under the rules of the A-UKFTA chapter, then it would be difficult for a future government to reverse that decision, since it would be seen as a reduction of market access under the agreement, as explained below.

The AEU strongly urges the government to recommend to the NSW Government that they remove TAFE NSW from their list of procuring entities at Annex 16.a. of the FTA.

TAFE SA

In October 2020 TAFE SA announced that twenty courses would be cut, including all subsidised childcare, aged care and disability courses from TAFE SA’s metropolitan campuses.²³ The South Australian Department of Innovation and Skills has subsequently directed public funding for vocational education to private training providers, further drawing funding and skills away from public vocational education in South Australia.²⁴

The AEU notes that TAFE SA is listed as a procuring entity by the South Australian Government at item 37 of Annex 16.a, and had been previously listed in the CPTPP.

If the SA government does decide to contract out more vocational education and training courses, and if that were done under the rules of the CPTPP and A-UKFTA chapters, then it

²¹ GOVERNMENT OFFSHORES EDUCATION WITH TAFE COURSE DEVELOPMENT SENT OVERSEAS
press release

²² <https://www.dailytelegraph.com.au/education-new-south-wales/tafe-teachers-claim-offshore-workers-botched-writing-of-course-programs/news-story/76c00f829bdb6021d46df16cea548ce1>

²³ <https://indaily.com.au/news/2021/05/10/fears-dozens-more-tafe-courses-face-axe-amid-strategy-of-secrecy/>

²⁴ https://www.aeusa.asn.au/AEUSA/Campaigns/Stop_Marshall_s_TAFE_cuts/AEUSA/Campaigns/Stop_Marshall_s_TAFE_cuts.aspx?hkey=21433b13-2fce-4b76-a813-b5f575704787

would be difficult for a future government to reverse that decision, since it would be seen as a reduction of market access under the agreement as explained below.

The AEU strongly urges the government to recommend to the South Australian Government that they remove TAFE SA from their list of procuring entities at Annex 16.a. of the FTA.

The potential for the FTA to override public policy for vocational education and training

In addition to the above, the AEU is extremely concerned that the inclusion of TAFE NSW and TAFE SA in Chapter 16 could make it extremely difficult for future governments to develop and implement public policy for the funding of vocational education and training.

In both NSW and SA, a “contestable funding” model is applied to vocational education and training which allows private training providers to bid to access public funds. For example, as of 2019, 82% of vocational education and training funding was going to TAFE NSW.²⁵

The AEU notes that the inclusion of TAFE NSW and TAFE SA as procuring entities runs counter to existing ALP and Australian Greens platforms in relation to the funding of quality vocational education and training which specify that upwards of 70% of Commonwealth funding for VET should be guaranteed to TAFE. The inclusion of TAFE NSW and TAFE SA as procuring entities at Chapter 16 could potentially limit the ability of future federal governments to guarantee specific proportions of public funds for vocational education,

It is evident that increased outsourcing and public funding of private providers is incompatible with the pursuit and implementation of these public policies. This should provide another impetus for the Committee to recommend the removal of TAFE NSW and TAFE SA as a procuring entities in Chapter 16.

The inclusion of TAFE in Chapter 16 could have further unanticipated effects, including severely restricting future government capacity to implement public policy designed to increase public funding to TAFE, or indeed, public policy aimed at reversing outsourcing and other forms of privatisation in regard to TAFE.

Specifically, if a future government decided to terminate contracts or reserve a certain amount of public funding of vocational education and training for TAFE, this could be seen as a decrease in market access under procurement rules for which they could initiate a dispute under the state-to-state disputes process in the FTA. This provides additional cause for removing TAFE NSW and TAFE SA from Chapter 16.

The potential impact of Investor-State Disputes Settlement (ISDS) mechanisms in the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) on this FTA

In this respect, equally concerning is the risk presented to TAFE by the Investor-State Disputes Settlement (ISDS) mechanisms in a separate treaty, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). If the UK becomes a party to the CPTPP, UK corporations may gain the right to sue the Australian Government for

²⁵ <https://www.newcastleherald.com.au/story/5928650/union-says-tafe-funding-model-needs-to-change-after-promises/>

compensation through an international tribunal, if they can make the case that a legal reform or policy change at any level of government will harm their investments. ISDS could operate, for example, to dissuade a government implementing the recommendations of the Royal Commission into Aged Care, for fear of being sued by foreign for-profit aged care providers.

Australia may be particularly vulnerable to this as a result of the FTA, being that the UK is the second highest foreign investor in Australia and UK companies are the third most frequent users of ISDS.²⁶ Previously, claims using ISDS have been made or threatened against public interest regulation, including in relation to environmental protections, Aboriginal and Torres Strait Islander rights, public health measures, labour rights and privatisation.²⁷ For example, the Mexican transport company ADO threatened Portugal with a 42 million euro ISDS case after it cancelled plans to privatise part of Lisbon's public transport network.

Apart from the vital arguments about the potential for ISDS to undermine Australian democracy, ISDS would pose a distinct threat to any public policy designed to reverse the privatisation of TAFE and the outsourcing of its services, by having a freezing effect on the introduction of regulation.

Simply put, any government contemplating increasing public funds to TAFE and/or reversing outsourcing of educational services including course development, could be dissuaded by the threat of potential lawsuits brought by UK corporations who have made investments in the market sector, particularly since previous cases have shown that ISDS cases, even when won, can result in tens of millions of dollars of taxpayer dollars being lost.²⁸

Fortunately, the FTA as signed excludes ISDS, which was the result of intense community opposition. Both the UK and Australia have described the exclusion of ISDS as a benefit of the FTA and its exclusion as reflecting the confidence the two countries had in each other's legal systems.²⁹ However, as AFTINET has already argued, it would be inconsistent and dangerous to exclude ISDS from the FTA, but to enable it to apply in the CPTPP. In the CPTPP, government and sector regulations are open to ISDS disputes. These mechanisms could potentially be extended to apply to disputes about government procurement by TAFE NSW and TAFE SA, even though these procuring entities are covered specifically by this FTA only. The impact is somewhat unpredictable in this respect but the risks are too great to be left to chance.

Therefore, the AEU endorses the recommendation made by the Australian Fair Trade and investment Network (AFTINET) in its submission to this inquiry,³⁰ that Australia should insist that both Australia and the UK agree that ISDS provisions do not apply to each other, and further that this should be a condition for Australia granting its support to the UK joining the CPTPP. A similar agreement via the exchange of side letters, in relation to the CPTPP and the ISDS, already exists between Australia and New Zealand, demonstrating that such an arrangement is possible.

²⁶ <http://aftinet.org.au/cms/aftinet-raises-alarm-on-ISDS-risk>

²⁷ <http://aftinet.org.au/cms/ISDS>

²⁸ <https://www.theguardian.com/commentisfree/2021/jun/01/a-clause-in-the-uk-australia-trade-deal-could-let-companies-sue-governments-we-have-been-here-before>

²⁹ <https://www.dfat.gov.au/trade/agreements/not-yet-in-force/ukfta-outcomes-documents/benefits-australia>

³⁰ <http://aftinet.org.au/cms/sites/default/files/220220%20submission%20to%20DFAT.pdf#overlay-context=>

In this vein, the AEU further urges the Committee to recommend that it be a condition of Australia's ratification of the FTA that both countries will agree that ISDS will not apply between Australia and the UK.

Without an explicit agreement excluding access to ISDS for UK companies, Australian government entities could find it extremely challenging to reverse the damaging effects of privatisation, outsourcing and job cuts outlined above.

Summary of AEU recommendations to the Inquiry

Chapter 10 of the FTA contains serious flaws which threaten to undermine the maintenance of professional standards, the quality of educational provision, and the safety of children within Australian schools. Chapter 16 along with ISDS provisions in the CPTPP pose a challenge to the capacity of public policy to address outsourcing, privatisation and job cuts within TAFE NSW and TAFE SA, and will only continue to undermine the quality of vocational education in these states.

The AEU urges the Committee to carefully consider the below recommendations before there is any consideration of passing the enabling legislation which is required before ratification.

Chapter 10 – Professional qualifications and recognition of professional qualifications

1. The AEU urges the Committee to consider the potential for future negotiations on mutual recognition of qualifications in article Chapter 10 to lower the standard of entry to provisional registration to teach in Australia to the QTS, and the subsequent potential for such a change to undermine the current requirements of all state and territory registration bodies as they pertain to the provisional registration of teachers from the UK to teach in Australia.
2. The AEU urges the Commonwealth Government to ensure that there are no future negotiations by government arising from Article 10.4 and 10.5 that would undermine current state and territory registration requirements, including the autonomy of all Australian jurisdictions to maintain high standards of entry into the teaching profession, and specifically that the assessment only route to QTS (as described in the guidance produced by the Department for Education in England³¹) is specifically prohibited in the FTA as a valid qualification to seek teacher registration in all Australian jurisdictions.
3. The AEU strongly urges the Professional Services Working Group described at Article 10.6 to engage deeply with the AEU and other representatives of the teaching profession in its consideration of the recognition of professional qualifications.

Chapter 16 – Government Procurement

4. The AEU strongly urges the Commonwealth Government to recommend to the NSW Government that it removes TAFE NSW from their list of procuring entities at Annex 16.a. of the FTA.

³¹ <https://www.gov.uk/guidance/qualified-teacher-status-qts>

5. The AEU strongly urges the Commonwealth Government to recommend to the South Australian Government that it removes TAFE SA from their list of procuring entities at Annex 16.a. of the FTA. +
6. The AEU further urges the Committee to recommend that it be a condition of Australia's ratification of the FTA that both countries will agree that ISDS will not apply between Australia and the UK.